



Comptroller General
of the United States
Washington, D.C. 20548

J. Vickers

Decision

Matter of: Michigan Data Storage
File: B-242219
Date: December 19, 1990

Ryan A. Husaynu, Esq., Abbott, Nicholson, Quilter, Esshaki & Youngblood, for the protester.
Stephen J. Neubeck, Internal Revenue Service, for the agency.
James Vickers, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Filing of protest with General Services Administration Board of Contract Appeals (GSBCA) does not toll the requirement that a protest be timely filed with the General Accounting Office (GAO). Thus, protest filed with GAO more than 10 days after initial adverse agency action is dismissed as untimely.

DECISION

Michigan Data Storage (MDS) protests that award of a contract to Leonard Archives by the Internal Revenue Service under invitation for bids (IFB) No. IRS-C-90-020 for off-site tape storage. MDS contends Leonard's facility does not meet the requirements of the IFB.

We dismiss the protest as untimely.

The IFB was issued on August 6, 1990, with bid opening held on September 4. Following the rejection of the low bid as nonresponsive, award was made to Leonard on September 25, as the next low bidder. MDS was informed of the award on September 26.

By letter dated September 26, MDS filed a "Notice of Protest" with the contracting officer. The letter, after stating the grounds of protest noted, "If this protest needs to be filed with GAO or any other office, please instruct us as to the proper procedure." Because he did not know if the protest was to be considered an agency-level one, by letter dated October 16, the contracting officer asked the protester if its

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prior letter was to be considered an agency-level protest and referred the protester to those parts of the Code of Federal Regulations dealing with protests to the our Office and to the General Services Administration Board of Contract Appeals (GSBCA).

On October 29, the protester filed a protest with the GSBCA, which was followed by a prehearing conference on November 2. At that time IRS objected to the jurisdiction of the GSBCA. The Board dismissed the protest for lack of jurisdiction on November 21. MDS filed its protest with our Office on December 3.

MDS argues that its protest is timely because it was filed with our Office within 10 working days of the dismissal of its GSBCA protest. MDS states it filed at the GSBCA when it appeared no action was being taken by the agency on its protest dated September 26.

Assuming that MDS' September 26 letter was intended to be an agency-level protest, to be timely a subsequent protest to our Office had to be filed within 10 working days of actual or constructive knowledge of initial adverse agency action. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1990).

We find the initial adverse agency action to have occurred on November 2, when at the prehearing conference, MDS was aware that IRS was taking a position adverse to that of the protester and was not taking any corrective action based on the prior agency-level protest. The fact that MDS had filed at the GSBCA and that the matter was not formally dismissed until November 21 is irrelevant. Filing with the GSBCA does not toll the running of our filing requirements. Electrophysics Corp., B-240545, Aug. 10, 1990, 90-2 CPD ¶ 119. Since MDS' protest was filed more than 10 working days after November 2, it is dismissed as untimely.



John Brosnan
Assistant General Counsel